

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

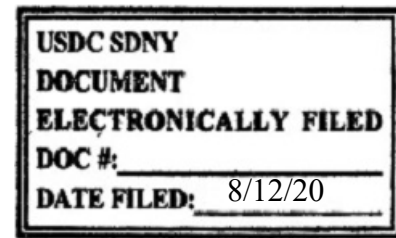
ESLAM HASSAN,

Plaintiff,

-against-

CORRECTION OFFICER JANE DOE, et al.,

Defendants.



19-cv-08864 (AJN) (BCM)

ORDER TO AMEND

BARBARA MOSES, United States Magistrate Judge.

Plaintiff brings this *pro se* action pursuant to 42 U.S.C. § 1983. His complaint (Dkt. No. 2) alleges that, while he was detained at the George R. Vierno Center (GRVC) on Rikers Island, defendants were deliberately indifferent to his serious mental health and medical needs, and used excessive force against him.

By Order dated November 22, 2019 (Dkt. No. 11), the Honorable Alison J. Nathan, United States District Judge, dismissed plaintiff's claims against Warden Clayton Augustus and the John and Jane Doe supervisors and commissioners, denied plaintiff's application for counsel without prejudice, and requested that defendants City of New York; Captain Williams, Marral, and White; and Correction Officers Brown, Witkins, Black, Davis, Rodriguez #11007, John Doe #8724, Paul, and Atkins waive service of summons. The Court also directed plaintiff to file an amended complaint within thirty days "in which he provides more detailed, descriptive information for each of the Doe defendants." (*Id.* at 3.)

On December 17, 2019, counsel for defendants filed unexecuted waivers of service as to defendants Williams, Marral, White, Brown, Witkins, Black, Davis, Rodriguez, Paul, and Atkins, informing the Court that none of these individuals could be served for a variety of reasons,

including that there were no matches for some of the names and that as to other names, there was more than one person with that name in the agency. (Dkt. Nos. 15, 16.)

By Order dated January 3, 2020 (January 3 Order) (Dkt. No. 18), the Court (1) directed plaintiff to file a letter providing additional information about the unserved defendants, including alternative spellings of their names; and (2) directed defendants to file a letter (a) "[e]xplaining whether the New York City Department of Corrections (DOC) has attempted to identify the defendant 'John Doe #7824'"; (b) "[i]nforming the Court how many male captains named Williams were 'assigned and employed in intake as main intake'" at GRVC between 8 a.m. and 11 p.m. on August 11, 2016; (c) "[i]nforming the Court how many male COs named Atkins were 'employed in [the] 19A housing unit'" at GRVC between 9 a.m. and noon on August 22, 2016; (d) identifying "the individuals listed in defendants' unexecuted waivers of service"; and (e) "[i]dentifying, to the extent possible, each of the John and Jane Doe defendants" listed in the Complaint.

Plaintiff responded to the January 3 Order in a letter dated January 29, 2020, providing some additional identifying information about the defendants. (Dkt. No. 21.) Thereafter, in a letter dated February 11, 2020 (Dkt. No. 24), defendants responded to several of the Court's directives. They "confirmed that there are no employees with the surname 'Marra' or 'Marrel,' or 'Witkins.'" (*Id.* at 2.) They also confirmed that they were able to identify "Correction Officer John Doe #8724" as Jose Rodriguez. (*Id.* at 2-3.) Defendants also explained they would need additional time "to search through the records of the correction officers and captains who were on duty at the date and time specified by plaintiff." (*Id.* at 3.) By Order dated February 12, 2020, the Court granted defendants' request for an extension through March 12, 2020. (Dkt. No. 25.)

In a letter dated March 12, 2020 (Dkt. No. 28), defendants further responded to the January 3 Order by providing the names of two medical providers named as defendants: Charles Appiah,

RPA, and Maria Rivera, Ph.D. Defendants again requested an extension, until April 9, 2020, to respond to the other requests in the January 3 Order, which the Court granted. (Dkt. No. 29.)

By letter dated April 8, 2020 (Dkt. No. 30), defendants further responded to the January 3 Order. In the April 8 letter, they identified "Correction Officer Davis" as Correction Officer Asia Davis, Shield No. 11007. (*Id.* at 2.) They were also able to determine some of the officers who may have been present at the time of the August 21, 2016 incident alleged in plaintiff's complaint: Correction Captain Anthony Meli, Shield No. 173; Correction Officer Adrian Council, Shield No. 15559; and Correction Officer Asia Davis, Shield No. 11007. (*Id.*) Conversely, defendants advised that Correction Officer Beltteshazzar Reid, Shield No. 12924; Correction Officer Christopher Young, Shield No. 10779; and Correction Captain William Taylor, Shield No. 324 "were not present at the time of the incident" but "may have come to the scene after the fact." (*Id.*) Defendants further explained their difficulties in identifying the remaining individuals in plaintiff's complaint and requested a 90-day extension, which the Court granted in part, permitting an extension through June 8, 2020. (Dkt. No. 31.)

By letter dated June 8, 2020, defendants requested another 60-day extension to respond to the outstanding portions of the January 3 Order (Dkt. No. 35), which the Court granted. (Dkt. No. 36.) Concurrently, defendants City of New York and Jose Rodriguez filed their Answer to plaintiff's complaint. (Dkt. No. 34.)

Finally, by letter dated August 10, 2020 (Dkt. No. 37), defendants responded to the two outstanding portions of the January 3 Order. With respect to "how many male captains named Williams were assigned and employed in intake/main intake at GRVC between 8:00 to 11:00pm on August 11, 2016," defendants explain "there were no male captains named 'Williams' assigned and employed in Intake or Main Intake at GRVC" during that time on that date, but plaintiff may

be referring to Correction Captain William Taylor, Shield #324, who *was* employed in Intake at GRVC on that date. (*Id.* at 2.) With respect to "how many male COs named Atkins were 'employed in [the] 19A housing unit at G.R.V.C.' on August 22, 2016 'between 9:00 a.m. to 12:00 noon,'" defendants state that there were none. (*Id.* at 2.)

In light of the additional information provided by defendants, it is hereby ORDERED that plaintiff amend his complaint no later than **September 28, 2020**. A form that plaintiff may use for that purpose is attached to this Order. Plaintiff is reminded that his Amended Complaint will replace – not supplement – his original Complaint. In other words, the Amended Complaint must stand on its own. It must (a) identify all of the defendants against whom plaintiff intends to make a claim; (b) assert one or more legal claims against each defendant; and (c) set forth all of the facts necessary to support those claims.

Chambers will serve a copy of this Order upon plaintiff by mail at his last known address and will include copies of each of defendants' letters, described above, responding to the January 3 Order.

Dated: New York, New York
August 12, 2020

SO ORDERED.



BARBARA MOSES
United States Magistrate Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Write the full name of each plaintiff.

No. _____
(To be filled out by Clerk's Office)

-against-

COMPLAINT
(Prisoner)

Do you want a jury trial?

☐ Yes ☐ No

Write the full name of each defendant. If you cannot fit the names of all of the defendants in the space provided, please write "see attached" in the space above and attach an additional sheet of paper with the full list of names. The names listed above must be identical to those contained in Section IV.

NOTICE

The public can access electronic court files. For privacy and security reasons, papers filed with the court should therefore *not* contain: an individual's full social security number or full birth date; the full name of a person known to be a minor; or a complete financial account number. A filing may include *only*: the last four digits of a social security number; the year of an individual's birth; a minor's initials; and the last four digits of a financial account number. See Federal Rule of Civil Procedure 5.2.

I. LEGAL BASIS FOR CLAIM

State below the federal legal basis for your claim, if known. This form is designed primarily for prisoners challenging the constitutionality of their conditions of confinement; those claims are often brought under 42 U.S.C. § 1983 (against state, county, or municipal defendants) or in a “*Bivens*” action (against federal defendants).

☐ Violation of my federal constitutional rights

☐ Other: _____

II. PLAINTIFF INFORMATION

Each plaintiff must provide the following information. Attach additional pages if necessary.

First Name	Middle Initial	Last Name
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State any other names (or different forms of your name) you have ever used, including any name you have used in previously filing a lawsuit.

Prisoner ID # (if you have previously been in another agency’s custody, please specify each agency and the ID number (such as your DIN or NYSID) under which you were held)

Current Place of Detention

Institutional Address

County, City	State	Zip Code
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III. PRISONER STATUS

Indicate below whether you are a prisoner or other confined person:

☐ Pretrial detainee

☐ Civilly committed detainee

☐ Immigration detainee

☐ Convicted and sentenced prisoner

☐ Other: _____

IV. DEFENDANT INFORMATION

To the best of your ability, provide the following information for each defendant. If the correct information is not provided, it could delay or prevent service of the complaint on the defendant. Make sure that the defendants listed below are identical to those listed in the caption. Attach additional pages as necessary.

Defendant 1:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 2:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 3:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

Defendant 4:

First Name	Last Name	Shield #
Current Job Title (or other identifying information)		
Current Work Address		
County, City	State	Zip Code

V. STATEMENT OF CLAIM

Place(s) of occurrence: _____

Date(s) of occurrence: _____

FACTS:

State here briefly the FACTS that support your case. Describe what happened, how you were harmed, and how each defendant was personally involved in the alleged wrongful actions. Attach additional pages as necessary.

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[illegible]

INJURIES:

If you were injured as a result of these actions, describe your injuries and what medical treatment, if any, you required and received.

VI. RELIEF

State briefly what money damages or other relief you want the court to order.

[illegible]

VII. PLAINTIFF'S CERTIFICATION AND WARNINGS

By signing below, I certify to the best of my knowledge, information, and belief that: (1) the complaint is not being presented for an improper purpose (such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation); (2) the claims are supported by existing law or by a nonfrivolous argument to change existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Federal Rule of Civil Procedure 11.

I understand that if I file three or more cases while I am a prisoner that are dismissed as frivolous, malicious, or for failure to state a claim, I may be denied *in forma pauperis* status in future cases.

I also understand that prisoners must exhaust administrative procedures before filing an action in federal court about prison conditions, 42 U.S.C. § 1997e(a), and that my case may be dismissed if I have not exhausted administrative remedies as required.

I agree to provide the Clerk's Office with any changes to my address. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

Each Plaintiff must sign and date the complaint. Attach additional pages if necessary. If seeking to proceed without prepayment of fees, each plaintiff must also submit an IFP application.

Dated	Plaintiff's Signature
First Name	Middle Initial
	Last Name
Prison Address	
County, City	State
	Zip Code

Date on which I am delivering this complaint to prison authorities for mailing: _____